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# In the Supreme Court
OF THE
# United States

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OCTOBER TERM, 1926

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No.

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ALASKA PACKERS ASSOCIATION (a corporation),
*Petitioner,*

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and JOHN PETERSON,
*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI
### to the Supreme Court of the State of California.

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*To the Honorable William Howard Taft, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:*

Alaska Packers Association, a corporation organized and existing under and by virtue of the laws of the State of California, the petitioner herein, respectfully shows as follows:

The respondent, John Peterson, entered into a contract in San Francisco, California, in the spring of 1925 whereby he agreed to go to Alaska for petitioner for the summer fishing season of that year as a seaman and fisherman. Pursuant to said contract, he went as a member of the crew of the bark "Star of Iceland" to Alaska where he spent the fishing season on a fishing vessel. While trying to free her stranded stern from the beach there between high and low water, standing in the mud and sand of the beach, he strained his back. The facts are more fully set forth in our accompanying brief.

The respondent, Industrial Accident Commission of the State of California, made an award in favor of Peterson and against petitioner for the permanent disability arising from said injury. A petition for a writ of review to annul said award was made by petitioner to the District Court of Appeal of the State of California. The writ was denied. Thereupon application was made by petitioner to the Supreme Court of California for a hearing. On August 20, 1926, the Supreme Court of California granted a hearing. On February 28, 1927, said court made its order affirming the award of said respondent, Industrial Accident Commission, and on March 29, 1927, said court denied a petition for a rehearing of said cause.

The judgment of the Supreme Court of California, as shown by its opinion (R. p. 99), is based upon the conclusion that, at the time of his injury, respondent, Peterson, was engaged in land labor, and that his injury was a matter of only local concern. The judgment is erroneous for each of the following reasons:

1. *The Supreme Court of California erred in holding that respondent, Industrial Accident Commission, had jurisdiction in this case. A seaman, as distinguished from a stevedore, is subject to the admiralty jurisdiction to the exclusion of the Workmen's Compensation Laws if he is injured while performing work pertaining to his duties as a seaman, regardless of whether he be injured while on shore or while aboard ship.* In other words, it is necessary to decide whether the doctrine of *Industrial Commission v. Nordenholt Corporation*, 259 U. S. 263, extends to seamen working on shore in connection with the operation of their vessel. It is our contention that it does not.

2. *The Supreme Court of California erred in holding that the work being done by Peterson at the time of his injury was land labor, because said work being performed pursuant to an inseverable maritime contract, consisted of his attempt to launch his partially stranded fishing vessel.*

3. *The Supreme Court of California erred in holding that the injury to Peterson was local, because it was suffered while he was engaged in performing services essential to an annual and seasonable commercial invasion of Alaska by water, expeditionary in its nature.*

4. *The Supreme Court of California erred in holding that respondent, Industrial Accident Commission, has extraterritorial jurisdiction over a matter local to Alaska, where the basis for such alleged jurisdiction is a maritime contract made and to be enforced in California.*

5. *The Supreme Court of California erred in holding that the injury to Peterson was land labor, because Peterson was constructively on board ship at the time of his injury regardless of what particular foothold he may have had at that time.*

Wherefore, petitioner respectfully prays that a writ of certiorari may be issued out of this court, in accordance with its practice, directed to the Supreme Court of the State of California, commanding it to certify to this court a complete transcript of the record of all proceedings in that court in this cause, and that the transcript herewith presented be ordered to stand as a return to said writ for that purpose; that this court assume jurisdiction of said cause and hear and determine the same; and that, upon such hearing, the judgment of the Supreme Court of the State of California be reversed, and that either the award of respondent, Industrial Accident Commission of the State of California, be annulled or this case be remanded to the Supreme Court of the State of California for the purpose of the annulment of said award; and that such orders may be entered and process issued by this court as may be necessary for this purpose.

Dated, San Francisco,
May 18, 1927.

CHICKERING & GREGORY,
ALLEN L. CHICKERING,
BLAIR S. SHUMAN,
*Attorneys for Petitioner.*

CERTIFICATE OF COUNSEL.

We hereby certify that the foregoing petition is in our judgment well founded in point of law as well as in fact and that it is not interposed for delay.

Dated, San Francisco,
May 18, 1927.

CHICKERING & GREGORY,
ALLEN L. CHICKERING,
BLAIR S. SHUMAN,
*Attorneys for Petitioner.*

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1926

No.

ALASKA PACKERS ASSOCIATION (a corporation),
*Petitioner,*

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and JOHN PETERSON,
*Respondents.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
**to the Supreme Court of the State of California.**

I.

### STATEMENT OF THE CASE.

In April, 1925, John Peterson, the applicant below, entered the employ of petitioner, Alaska Packers Association, by signing a contract at San Francisco, California. This contract bound Peterson to make a voyage to the Territory of Alaska during the summer of 1925 as a seaman and fisherman. (R. p. 22.) In

accordance with this contract Peterson signed the ship's articles and sailed from San Francisco in the latter part of April on the bark "Star of Iceland". (R. p. 31.) Together with his associates who had signed similar contracts, he acted as a seaman throughout the entire voyage from San Francisco to Alaska, taking his regular turn at the wheel, going aloft, and performing the various duties of a seaman while aboard ship. (R. p. 31.)

Upon the arrival of the vessel, he and the other seamen and fishermen were set ashore at the Scandinavian Cannery of petitioner at Nushagak, Alaska. (R. p. 32.) The cannery is located upon the Naknek River about forty-five miles from the ocean, which river is navigable up to that point. There is there a twenty-four foot difference between high and low water extremes. (R. p. 48.) He was put to work at once repairing nets and fishing boats on the dock where they had been stored for the winter. (R. p. 32.) This repair work took several days. As soon as it was finished, he was assigned to fishing boat No. 10. This boat was about thirty feet long, weighed in the neighborhood of six hundred pounds and was manned by Peterson and his partner. (R. p. 47.)

During the entire fishing season they conducted their fishing operations from this same boat. At times they sailed out of sight of land and some of their voyages lasted four or five days. (R. p. 32.) At other times they would return at night. However, whether they returned or not, both of them, during the entire season, slept aboard the boat and cooked all their own meals there. (R. p. 70.)

The fishing season at that cannery closed about the 21st day of July. On that day the seamen and fishermen were directed to bring their fishing vessels to the dock in order that they might be lifted by the winch and stored away for the winter. (R. p. 34.) On the 20th Peterson, according to his usual custom when his boat was at the cannery, had brought his vessel in near to the beach at some distance from the dock. (R. p. 33.) He anchored her there with the intention of taking her around to the winch the next day. Because of the great difference between high and low water at that point, the boat was stranded high and dry at low water although at high water, when he anchored her, there was a depth of about five feet. (R. p. 74.) On the 21st, when Peterson prepared to take the boat around to the winch on the dock, he found the water so low that her stern, which was toward the shore, was stranded on the mud and sand of the beach. The boat, however, rested in water for the whole of her length with the exception of the last six feet toward the stern. Because of the sharp slope of the beach at that point, her bow was in water about two feet deep. (R. p. 39.) Being unable to launch her unassisted under these circumstances, Peterson asked three or four of the men, who were standing on the beach, to help him. (R. p. 39.) Although he was at that time in sea boots himself and although all of the other men walked into the water in order to take hold of the boat at the waist and at the bow, he himself lifted from the stern with his feet in the mud and sand. While so lifting he claims that his back was injured. The vessel was

shoved off without difficulty in this manner. (R. p. 39.)

The applicant returned to San Francisco on board the "Star of Iceland". Again he served as a seaman aboard ship and, if his activities were in any manner curtailed, this was simply because he claimed to have an injured back. (R. p. 31.)

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## II.

## THE ARGUMENT.

### A. THE SUPREME COURT OF CALIFORNIA ERRED IN HOLDING THAT THE INJURY TO RESPONDENT PETERSON WAS NOT WITHIN THE EXCLUSIVE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS.

#### 1. Peterson's Agreement Was An Inseverable Maritime Contract.

Little argument is necessary to establish the maritime nature of Peterson's contract. He was employed as a seaman and fisherman. His duties consisted of the performance of the regular duties of a seaman on board a sailing vessel both on the trip to Alaska and upon the return. The fact that while he was in Alaska he acted as a fisherman does not change the nature of his contract. His activities during the fishing season in connection with fishing boat No. 10 were essentially maritime in view of the size of the vessel and the manner in which she was used. The duties incidental to the fishing season, such as the repairing of the fishing boats and nets on the dock, were restricted to the time of arrival and were themselves maritime.

In *Domenico v. Alaska Packers' Ass'n.,* 112 Fed. 554, where the petitioner herein was named as defendant and where the plaintiff therein was employed as a seaman and fisherman under a contract identical with the one in the case at bar, the contract was held wholly maritime, the court saying:

> "It will be noticed that the principal subject of the contract upon the part of the libelants was for the rendition of services as fishermen at Pyramid Harbor, and included work in the cannery on shore, in preserving the fish caught by them, and also the labor of placing the fish on board the Two Brothers for transportation to San Francisco. The contract is, however, maritime in its nature. The fact that, while engaged in fishing at Pyramid Harbor, the libelants slept on shore, and mended their nets, and cared for the fish on shore, and that this was contemplated by the contract, does not make it any the less a maritime contract which a court of admiralty has jurisdiction to enforce. The Minna (D. C.) 11 Fed. 759."

The *Domenico* case goes farther than it is necessary to go here for the reason that Peterson did not sleep on shore during the season but upon his own fishing boat.

One of the cases relied upon in the *Domenico* case is *The Minna,* 11 Fed. 759. In that case it was held that persons employed simply as fishermen upon a fishing vessel who had nothing to do with navigation were subject to admiralty jurisdiction, the court saying:

> "* * * So, I take it, if men should engage upon a whaling voyage solely for their skill in finding or catching whales, or trying out oil, they would be regarded as mariners, and be entitled to the same remedies as the crew, though

> they took no part in the navigation of the ship. The test is whether the services are for the benefit of a vessel engaged in commerce and navigation. If there be a failure in either respect, viz., in the character or in the nature of the ship's employment, there is no lien.
>
> I do not regard the fact that libelant slept upon shore at night, and there reeled out and mended the nets, as qualifying in any way the nature of his contract. These services were merely incidental and subsidiary to his main contract. *The Canton,* 1 Spr. 437; *The Mary,* Id. 204."

To the same effect are:

*Union Fish Co. v. Erickson,* 248 U. S. 308;

*North Alaska Salmon Co. v. Larsen,* 220 Fed. 93;

*Heino v. Libby, McNeill & Libby,* (Wash.) 205 Pac. 854;

*Leszczymski v. Andrew Radel Oyster Co.* (Conn.), 129 Atl. 539.

The foregoing authorities establish the principle that a contract for a voyage to Alaska and return as a seaman and fisherman is wholly maritime and is in no wise affected by the circumstance that certain duties may be performed while there which are not strictly considered with the vessel upon which the seaman has shipped.

Although the Supreme Court of California concluded that the injury to Peterson was not maritime, it conceded that the contract was maritime and inseverable, saying:

> "Peterson's contract with the petitioner was undoubtedly maritime in its nature. * * * We do not regard the fact that the employee worked

> at mending nets, performed services in loading and unloading lighters carrying the cargo to the ship, and, part of the time while the vessel was in Alaska, slept on shore, as qualifying in any way the nature of his contract, *or rendering it severable.*" (Italics ours.) (R. p. 101.)

The foregoing quotation from the opinion of said court shows that it regarded the contract as being wholly maritime in character.

**2. Fishing Boat No. 10 Was in Every Respect in Commission as Such at the Time of the Injury to Peterson.**

While it is true that the actual fishing operations at the cannery had been completed on the last working day prior to Peterson's injury, the only steps which had been taken in recognition of this fact were, first of all, the intention of the cannery superintendent and, secondly, the removal of the nets from the boat. At any time prior to the actual hoisting of the boat upon the dock for the winter, these two matters might have been changed. Upon five minutes notice the fishing vessel could have been taken around to the dock, the nets dropped aboard her, and she could have immediately resumed fishing operations. That she happened to be beached indicates no change in her use. The place and manner of the beaching were in no manner different from those used throughout the fishing season during those nights when Peterson and his partner returned to the cannery. Peterson himself testified:

> "Q. Where was it usually anchored?
> A. In different places.
> Q. Would it be in deep water or in shallow water?

A. Shallow water.
Q. Where the tide ebbed and flowed?
A. The tide was in and out.
Q. Where you would leave the boat ordinarily, would it be on the sand?
A. Sometimes it was dry and sometimes it was afloat." (R. p. 33.)

It would, indeed, be a strange situation if a vessel, still virtually afloat in navigable water, still manned by her usual crew, and still ready for an immediate voyage, could be shorn of her character as an instrumentality of navigation simply by the removal of her nets.

**3. Admiralty Has Exclusive Jurisdiction Over the Injury of a Seaman Suffered While Performing Maritime Services for His Ship Even Though He May Be On Shore at the Time.**

We are aware of no decision—other than that of the California Supreme Court in the instant case—discussing the question of whether a seaman injured on land while performing maritime services in connection with the operation of his ship is subject to the maritime law or to the Workmen's Compensation Act of the place of his injury. However, in all the decisions it seems to be assumed that a seaman injured in connection with his work, *whether on board ship or ashore,* is entitled to wages, maintenance and cure (*The Osceola,* 189 U. S. 158, and *Chelentis v. Luckenbach S. S. Co.,* 247 U. S. 372), and, if his injury arises from the unseaworthiness of the ship, to indemnity therefor. He has no other redress. The *Merchant Marine Act* (Act of June 5, 1920, C. 250, 41 Stat. at L. 988) adds nothing to these rights but merely gives additional forms of remedy in doing away with cer-

tain defenses and in permitting a trial by jury. (*Panama Railroad Co. v. Johnson,* 264 U. S. 375.) To permit the states to take jurisdiction over such matters is unconstitutional in being an interference with the uniform operation of the maritime laws. Much of the work done by a seaman ashore is as essential to the functioning of the ship as his work done on shipboard. If the local laws had no jurisdiction before the passage of the workmen's compensation acts of the various states, certainly those acts cannot confer jurisdiction. In either case, the ship being seaworthy, the seaman is unqualifiedly entitled to his wages, maintenance and cure regardless of negligence. (*Chelentis v. Luckenbach S. S. Co.,* supra.) *He is entitled to no other redress.* The redress offered by the workmen's compensation acts, being virtually the same sort of payment, would constitute a double relief if he were allowed to collect both. Furthermore, the right to wages, maintenance and cure, being an implied term of the maritime contract, cannot be enforced by the Workmen's Compensation Commissions. (*Union Fish Co. v. Erickson,* 248 U. S. 308.) The situation is one where the maritime law will not permit a seaman to be deprived of one remedy and where equity and fair dealing will not permit him—having the one—to assert the other.

The Supreme Court of California relies upon *Industrial Comm. v. Nordenholt Corporation,* 259 U. S. 263, as laying down a different principle. It is true that in that case it was held that, in order to oust the State Industrial Commission of jurisdiction, there must be a concurrence both of a maritime contract and of a

maritime place of injury. However, the workman injured there was a *stevedore,* and we take it that said decision must be limited to stevedores and does not apply to seamen. In other words, a stevedore recovers either in admiralty or under the state laws according to whether he may chance to be hurt while afloat or on shore—the theory being that, if he is injured on shore in such a border line employment, the matter is generally local and the uniform operation of the admiralty laws is not threatened. But a seaman has no such "amphibious" character as a stevedore, a night watchman and the like. If he is actually employed as a seaman, he is subject to the exclusive admiralty jurisdiction of the federal courts so long as he shall continue to render essentially maritime service under his contract, even though he be injured upon land.

This distinction between a seaman and a stevedore is well pointed out in *Benedict on Admiralty* (Fifth Edition), p. 38, where the author says:

> "* * * The *stevedore's* contract of employment did not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. It should be noted that a *seaman's* contract contemplates the application of the general maritime law and *that law confers the right to maintenance and cure in case of illness or injury incurred, irrespective of negligence, while he is in the ship's service whether such illness or injury originate on land or upon navigable waters.* The seaman's rights in admiralty have a scope as broad as his employment but a stevedore can have no cause of action in admiralty against his employer for injury unless received on navigable waters and received by reason of the employer's negligence." (Italics ours.)

And on page 41 this same author says:

> "* * * Whether injured afloat or ashore, he (a seaman) is not within the workmen's compensation laws of the states."

Parsons lays down the same rule, saying:

> "There is, however, by the general law-merchant, an obligation upon every ship-owner or master to provide for a seaman who becomes sick, or wounded or maimed in the discharge of his duty, whether at home or abroad, at sea *or on land*—if it be not by his own fault,—suitable care, medicines, and medical treatment, including nursing, diet and lodging." (*Parsons on Shipping,* Vol. II, p. 80.) (Italics ours.)

It is significant that the opinion in the *Nordenholt* case, supra, contains the following words:

> "* * * The *stevedore's* contract of employment did not contemplate any dominant federal rule concerning the master's liability for personal injuries received on land." (Italics ours.)

The obvious inference to be drawn from this language is that the *seaman's* contract does contemplate such a dominant federal rule for personal injuries received on land.

The case of *Netherlands American Steam Navigation Co. v. Gallagher,* 282 Fed. 171, like the *Nordenholt* case, concerns simply an injury to a stevedore and any language therein contained going beyond stevedore cases must be regarded simply as *dicta.* There are certain other decisions which have been relied upon by counsel for respondents throughout this case which are easily distinguishable. One of these is *Todahl v. Sudden & Christenson,* 5 Fed. (2d Ser.)

462. There it was held that a seaman injured by falling into a hole in the floor of the dock while returning to his ship was not subject to admiralty jurisdiction, but the important thing is that the seaman had been permitted to leave his ship temporarily wholly upon an errand of his own and, therefore, could not be said to be rendering any services in connection with his maritime contract. The court said:

> "* * * It is true, as we held in Lamphere v. Oregon Nav. Co., 196 F. 336, 116 C. C. A. 156, 47 L. R. A. (N. S.) 1, that an employee is in the service of his master whenever he is doing that which under his contract of employment he is bound to do. But here the plaintiff, *in voluntarily going ashore, and thus by his own act making his return necessary,* was not doing that which his contract of employment bound him to do."

Another of these cases, is *Hughes v. Alaska Steamship Co.,* 287 Fed. 427. There the plaintiff, a messboy, was injured on the dock while assisting in the unloading of a cargo from his ship. It was held that the Merchant Marine Act (Act of June 5, 1920, C. 250, 41 Stat. at L. 988) in no manner extended the scope of admiralty jurisdiction so far as torts committed on land were concerned. It appeared, however, that the injured seaman signed the ship articles as a messboy, that he was not supposed to perform services other than waiting on members of the crew, and that he undertook the stevedoring work on the dock under protest. And, in *Soper v. Hammond Lumber Co.,* 4 Fed. (2d Ser.) 872, the plaintiff, a seaman, was injured on the dock while loading lumber upon his vessel. Upon the authority of the *Hughes* case, supra,

it was held that there could be no recovery in an action based on the Merchant Marine Act. It is to be noted, however, that in both the *Hughes* and the *Soper* cases the services rendered by the seaman at the time of his injury on the dock had to do with the loading or unloading of the vessel; that is to say, with services ordinarily rendered, not by a seaman, but by a stevedore. Under such circumstances, the court undoubtedly felt that the rule governing the injury to stevedores injured upon land should apply. In fact, in *The Canadian Farmer,* 290 Fed. 601, the *Hughes* case is referred to as being a stevedore case, the court saying:

> "Opposing cases are where the facts showed that the *stevedore* was working on the dock rather than on the ship as in Swayne v. Barsch, 226 Fed. 581, 141 C. C. A. 337; Hughes v. Alaska S. S. Co. (D. C.) 287 Fed. 427."

It is also to be noted that the court had in mind simply the question of whether the Merchant Marine Act had extended the scope of admiralty jurisdiction in the case of persons injured upon land and did not go into the question whether prior to the passage of said statute admiralty jurisdiction did or did not exist in such cases If our above attempted distinctions of the *Todahl, Hughes* and *Soper* cases be not supported by the facts, we submit that said decisions, being so at variance with well established maritime principles are wrongly decided.

There is nothing in the case of *International Stevedoring Co. v. Haverty,* 47 Sup. Ct. Rep. 19, which works against us in this case. It merely reiterates

the rule laid down in *Panama Railroad Co. v. Johnson*, 264 U. S. 375, to the effect that the *1920 Amendment* to the *Merchant Marine Act* does not affect or extend territorially in any way the maritime jurisdiction, but simply gives a seaman the same rights, with different forms of remedy, that he had before. Then it goes on to hold that the word "seaman", as used in the Act, is broad enough to cover a stevedore injured while working aboard ship. We do not understand that by it Mr. Justice Holmes intended to hold that all distinctions between stevedores and seamen were thereby eliminated. Rather he intended merely to extend the ordinary meaning of the word "seaman" in order to give stevedores the same form of remedies under certain conditions. Far from holding that the words "stevedore" and "seaman" are now interchangeable, the court says:

> "It is true that *for most purposes*, as the word is commonly used, *stevedores are not 'seamen'* but words are flexible." (Italics ours.)

It is to be remembered that, in the *Haverty* case, the question before this court was how far Congress intended to go by the use of certain words, whereas, in the case at bar, the question is not one of interpretation but is whether, apart from all questions of federal legislation, the injury to Peterson comes within the exclusive admiralty jurisdiction of the United States.

Peterson was injured while performing an essentially maritime service. Although he was standing on the beach at the time, he was endeavoring to launch his own fishing vessel which was practically wholly

afloat in navigable water. The injury was as essentially maritime as would be that of a seaman who, when his steamer approached the dock, might be injured by coming in contact with said dock when swinging ashore on a rope in order to moor the vessel to a pile.

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**B. THE SUPREME COURT OF CALIFORNIA ERRED IN HOLDING THAT THE WORK BEING PLRFORMED BY PETERSON AT THE TIME OF HIS INJURY WAS LAND LABOR AND A MATTER OF LOCAL CONCERN.**

The Supreme Court of California bases its decision on the theory that the work being performed by Peterson was "land labor," and a matter of local concern, saying in this connection:

> "Peterson was injured while standing on the beach, pushing and lifting on a fishing boat in an endeavor to launch it. The work he was performing at the time of his injury had no more direct relation to navigation or commerce or to his duties either as a seaman or as a fisherman than would the work of a longshoreman loading or unloading a ship. *It was essentially 'land labor',* non-maritime in its nature. These circumstances serve to bring the case within the category of those relating to dock and port employees working under maritime contracts, but who sustain injuries on land. In such a case the *local* law may apply." (Italics ours.) (R. p. 103.)

We submit that the only basis for holding that this work was land labor is because Peterson happened at the time to have his feet on the beach. For the court to conclude correctly, first of all, that the contract was maritime and, secondly, that it was not sev-

erable, and then to go on to hold that the work was land labor because Peterson was standing on the beach is difficult to understand. He was endeavoring to launch an instrumentality of commerce and navigation. This instrumentality was a fishing vessel still in commission. He was one of the crew of said fishing vessel. Although the vessel was partially stranded at the time, it was virtually afloat in navigable water and both it and Peterson were far below the ordinary high tide mark for the Naknek River.

It is equally difficult to understand the conclusion reached by the Supreme Court of California that this so-called land labor was a matter of local concern. The nature of the business conducted by the petitioner is important in this connection. This business is an *annual* and *seasonable* business. During the winter the only evidence of that business to be found in Alaska is the deserted cannery itself. In the spring of each year, the company gathers together outside the Territory sufficient ships, men and cannery supplies to last through the very brief summer fishing season. The fleet left California for such a purpose and, the fishing having been completed and the catch of salmon canned, it returned with the laborers and the season's pack on board. (R. p. 33.) Such an undertaking is *expeditionary* in its very nature. Everything connected with it is one continuous, prearranged transaction. No incidents so closely related to such an interstate activity could be regarded as being local to Alaska. It is not necessary in this connection for petitioner to show that the business actually amounts to interstate commerce. It is enough that the activi-

ties of Peterson are shown to be an integral part of such a commercial invasion by water.

The case of *Millers' Indemnity Underwriters v. Braud,* 46 Sup. Ct. Rep. 194, relied upon the court below, is by no means in point here. In that case a diver was employed to remove the timbers of an abandoned set of ways thirty-five feet from the bank of the Sabine River. He used a floating barge from which to carry on his diving operations. While submerged, the air failed and he died of suffocation. This court held that such a matter was purely local in its interest and, therefore, not within the admiralty jurisdiction of the federal courts. It is apparent that the work done by the diver in such a case was local. Had he been injured while removing an obstruction from the keel of a vessel temporarily touching that port, his injury would have been maritime, but admiralty has no interest in the mere removal of an obstruction from the river bed by a diver not shown to have any other connection with commerce by sea.

The other cases relied upon by the Supreme Court of California in this connection are even more easily distinguished. In *Grant Smith-Porter Co. v. Rohde,* 257 U. S. 469, the injury occurred upon a vessel launched but not yet completed. In *Industrial Commission v. Nordenholt Corporation,* 259 U. S. 263, and in *Netherlands American Steam Navigation Co. v. Gallagher,* 282 Fed. 171, the injuries were suffered by stevedores while working on the dock and in *City of Oakland v. Industrial Accident Commission,* 198 Cal. 273, the employee was a deckhand on the scow used

as a tender to a municipal dredger, which dredger was employed in deepening a channel in the Oakland Estuary.

The foregoing matters establish that the labor being performed by Peterson was not land labor nor was it a matter of local concern.

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**C. THE SUPREME COURT OF CALIFORNIA ERRED IN HOLDING THAT THE RESPONDENT INDUSTRIAL ACCIDENT COMMISSION HAD EXTRATERRITORIAL JURISDICTION OVER A HAPPENING LOCAL TO THE TERRITORY OF ALASKA.**

The opinion of the Supreme Court of California holds that the injury suffered by Peterson arose while he was performing *land labor.* As we have already asserted, we deny the correctness of such a conclusion. However, even if it be conceded for the moment that the labor performed by Peterson was of such a character, still the Industrial Accident Commission of the State of California had no jurisdiction over it. The opinion is based upon the proposition that the injury to Peterson was *local.* The words "local laws" appear several times therein and there is also reference to "mere local concern" and "certain local matters." The decision, therefore, is placed squarely upon the well established rule that, even under a maritime contract, certain services are regarded as having so little effect upon the uniform operation of the maritime laws as to be regarded as being wholly local in character. The cases relied upon

by the court in this connection support such a general proposition.

*City of Oakland v. Industrial Accident Commission,* 198 Cal. 273;

*Western Fuel Co. v. Garcia,* 257 U. S. 233;

*Grant Smith-Porter Ship Co. v. Rohde,* 257 U. S. 469;

*Industrial Commission of New York v. Nordenholt Corporation,* 259 U. S. 263;

*Millers' Indemnity Underwriters v. Braud,* 270 U. S. 59.

However, the word "local" clearly connotes a definite place; *and the opinion does not state whether the locality in question is the State of California or the Territory of Alaska.* Obviously the injury cannot be regarded as being local to California, because it did not physically occur within the boundaries of that state. Therefore, the Supreme Court of California must have meant that the injuries suffered by Peterson were matters of local concern *to the Territory.* In spite of this, the reasoning proceeds as though the injury had in fact occurred not in Alaska but in California. If the injury had occurred in California under such a contract—assuming the labor to be actually land labor—then the matter would be subject to the local laws of California which, in this case, would be the Workmen's Compensation Law of said State. None of the authorities above referred to involve *extraterritorial jurisdiction.* In all of them the injury occurred within the territorial limits of the state whose Industrial Accident Commission made

If this is local it is local to Alaska.

the award. The situation is far different when the injury occurs in one jurisdiction and the tribunal making the award sits in the other. By what right may the Industrial Accident Commission of California make an award for an injury which is *local to* or the *local concern of* Alaska? That Territory has its own elective Workmen's Compensation Law (Laws of Alaska, 1923, p. 235) and presumably Peterson had the right either to file an application under it or to bring an action in the Federal District Court there.

That the Industrial Accident Commission of California cannot give its orders force beyond the borders of that State is admitted in *Quong Ham Wah Co. v. Industrial Acc. Com.*, 184 Cal. 26, where Mr. Justice Olney said:

> " * * * That a state has no power to prescribe what the law of another sovereignty shall be is, of course, plain. In this sense, and the true sense, a state can give no extraterritorial effect to its laws whatever. But the present law does not attempt to do this. What it attempts to do is to prescribe what shall be the incidents *within this state and according to its own law* of a relation existing without its boundaries." (Italics ours.)

The foregoing quotation makes it clear that, in upholding the extraterritorial jurisdiction of the Commission in a *nonmaritime case,* the Supreme Court of California disclaimed any intention of prescribing what the law of Alaska is or shall be. In the same decision Mr. Justice Lennon said:

> " * * * but *as law* the mandates of the sovereign of a given state can have no effect beyond the territorial limits to which his rule is extended. When, therefore, it is said that a statute, such as

> the Workmen's Compensation Act, has an extra-territorial effect, it cannot mean that the law does, or attempts to, create rights abroad; it can only mean that an act occurring beyond the geographical limits of the state is recognized as the basis for the creation or condition for the enforcement, of a right created and enjoyed within *this* state." (Italics ours.)

To hold that an act occurring in Alaska is a matter of local concern *to Alaska,* and then to proceed to take jurisdiction over it, is to challenge the sovereignty of that Territory. It is for Alaska hereslf to say what matters are of local concern to her. Only the appellate federal courts may determine whether she has unwarrantably attempted to interfere with the uniform operation of the maritime laws.

It is stated in the opinion of the Supreme Court of California with regard to the nature of the right given by the Workmen's Compensation Act that the law operates on the status of the parties and affixes certain rights and obligations to that status. *North Alaska Salmon Co. v. Pillsbury,* 174 Cal. 1. It is, however, clear from the language of that court in the *Quong Ham Wah* case, supra, a later decision, that *this status arises by virtue of the contract of employment,* it being said in the *Quong Ham Wah* case:

> " * * * But the statute which is now before us assumes to extend its effect only to those cases where the contract of hire was made in this state. *It is, therefore, not an attempt to create an obligation merely as an inicident to a status but is, in form and substance, a genuine regulation of contracts subject to the sovereignty of the state."* (Italics ours.)

The *Quong Ham Wah* case then emphasizes the power of the Legislature to impose such a right upon a contract which is subject to its jurisdiction, saying:

> " * * * The legislature may lawfully impose that right and duty upon those operating *under a contract subject to the legislative power,* and no principle of law is defeated by attaching to such contracts the same duties and rights as incidents to acts abroad that are lawfully imposed as incidents to the same acts occurring within the geographical limits of the state." (Italics ours.)
>
> "The right of the legislature to impose reasonable regulations *upon contracts subject to its sovereignty* is unquestioned." (Italics ours.)

We have italicized the words which emphasize the absolute necessity that the contract be subject to the jurisdiction of the legislature. *In the case at bar the contract is, even so far as the Supreme Court of California is concerned, admittedly maritime.* The only way in which the respondent Industrial Accident Commission may function at all in the case of an injury occurring in Alaska—even in a nonmaritime case—is by virtue indirectly of the contract of employment. Therefore, any attempt to assert that the injuries to Peterson are local to California, being based upon said maritime contract, can be of no effect. Such a contract may not be controlled by any state law. This is the holding in *Union Fish Co.* v. *Erickson,* 248 U. S. 308. That case concerned a contract by the terms whereof a sea captain, by virtue of an oral contract made in California, went to Alaska to perform services both on sea and on land, and it was there held that the California statue of frauds did not apply, this court saying:

"* * * We have, then, a maritime contract for services to be performed principally upon the sea, and the question is can such engagement be nullified by the *local laws* of a State, where the contract happens to be entered into, so as to prevent its enforcement in an admiralty court of the United States?"

"In entering into this contract the parties contemplated no services in California. They were making an engagement for the services of the master of the vessel, the duties to be performed in the waters of Alaska, mainly upon the sea. *The maritime law controlled in this respect, and was not subject to limitation because the particular engagement happened to be made in California. The parties must be presumed to have had in contemplation the system of maritime law under which it was made.* *Watts* v. *Camors,* 115 U. S. 353, 362." (Italics ours.)

There is no difference between the Workmen's Compensation Act and the California statute of frauds in this connection. Neither of them have any force so far as they conflict with the uniform operation of the maritime laws of the United States.

From the foregoing it is clear that there can be no *extraterritorial* jurisdiction of the respondent Industrial Accident Commission under a *maritime* contract regardless of the circumstances of the injury, whether it occurs upon land or upon navigable water. We respectfully submit, therefore, that the decision cannot be based upon a matter which is the local concern of California, because the injury did not occur in said State; that neither the Industrial Accident Commission nor the Supreme Court of California have any jurisdiction over matters local to Alaska and that, by upholding the award in the present case upon the

ground that the matter was of local concern, the Supreme Court of California has attempted to bring about an unwarranted interference with Territorial affairs.

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**D. THE INJURY TO PETERSON WAS SUFFERED BY A MAN AT WORK UNDER A MARITIME CONTRACT ABOUT A VESSEL VIRTUALLY AFLOAT IN NAVIGABLE WATER AND, THEREFORE, IT MAKES NO DIFFERENCE WHAT PARTICULAR FOOTHOLD HE HAD AT THE TIME IN QUESTION.**

At the time of his injury Peterson was standing in the mud and sand of the beach, but he was working about a vessel afloat in navigable water. Under such circumstances he *was, constructively at least, on board such a vessel.*

The situation is the same as that which existed in *Butler v. Robins Dry Dock & Repair Co.* (N. Y.), 147 N. E. 235. In that case a man was at work under a maritime contract in a "graving dock" upon the keel of a ship, a graving dock being one built upon dry land and projecting into navigable water. In this case a vessel had been admitted to the dock and, after the water had been pumped out, the employee, while standing on the dry floor of the dock and beneath the vessel, proceeded to fasten certain plates to the keel. While so engaged, a plate was dropped from the side of the vessel, killing him. The court held that such employment was so essentially maritime as to be subject to the exclusive admiralty jurisdiction. (In this connection, see *The Anglo-Patagonian,* 235 Fed. 92; *Great Lakes Dredge & Dock Co.*

*v. Kierejewski,* 261 U. S. 479; *Gonsalves v. Morse Dry Dock Co.,* 266 U. S. 171; and *Robins Dry Dock Co. v. Dahl,* 266 U. S. 449.) This conclusion was reached regardless of the fact that he was, at the time of his injury, standing upon an extension of the land, to-wit, the floor of the dock. The court said:

> "We have no doubt that within the decisions which we have cited, if we are otherwise right, an accident happening to a workman standing on a staging on the outside of a vessel or on a dock at its keel and working on the vessel is just as much a maritime tort as though the man was standing on the deck of the vessel. *The controlling circumstance is that he is engaged in making repairs on a vessel regarded as being in navigable waters and the particular foothold within the limits presented by this case which he utilizes in order to establish contact with the vessel and do his work cannot be material.* Great Lakes Dredge & Dock Co. v. Kierejewski, supra; Anglo-Patagonian, supra."

The *Bulter* case is particularly important because it shows that so long as the vessel, in connection with which the man is injured while working, is actually or constructively in navigable water, it makes no difference what particular foothold he may have in order to effect his purpose. In the case at bar Peterson had a foothold consisting of the mud and sand of the beach, but he was constructively working on board a vessel afloat in navigable water.

## III.

### CONCLUSION.

For the foregoing reasons we submit that the award of respondent, Industrial Accident Commission, being an unwarranted interference with the uniform operation of the maritime laws of the United States, is unconstitutional and void; that it should have been annulled by the Supreme Court of California, and that the decision of said court should accordingly be reversed.

Dated, San Francisco,
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Respectfully submitted,
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